

48A C.J.S. Judges § 274

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

IX. Disqualification to Act

C. Grounds for Disqualification

1. In General

d. Expression of Opinion

§ 274. Particular statements or expressions—Public comment

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  49(2)

Remarks by a trial judge to the press and other members of the public regarding pending proceedings in any court may necessitate recusal.

Remarks by a trial judge to the press and other members of the public regarding pending proceedings in any court may necessitate recusal.¹ To ensure the integrity and impartiality of the judiciary, judges must scrupulously avoid making public comments on pending litigation.² A public pronouncement by a judge of his or her attitude regarding certain offenses for which persons will be tried before the judge and of a policy to be pursued by the judge regarding sentencing is ill advised.³ When a public statement so made is such as to indicate bias of the judge, it can operate to disqualify the judge from hearing those matters.⁴ Indeed, a judge's statements to the media may undermine the judge's appearance of impartiality with respect to a pending proceeding even if the

judge refrains from specifically identifying that proceeding in the judge's remarks to the media.⁵ Furthermore, judges who affiliate themselves with news stories by participating in interviews run the risk that the resulting stories may contribute to the appearance of partiality.⁶

However, not every media comment made by a judge is necessarily grounds for recusal.⁷ Whether a judge is disqualified depends on the substance of the comments.⁸ The focus is on the effect of the public comments, not merely their existence.⁹ The test is not how a judge intended the remarks to be understood but whether, as a result of interviews or other extrajudicial statements, the appearance of impartiality might reasonably be questioned.¹⁰

CUMULATIVE SUPPLEMENT

Cases:

Trial judge's comments at accomplice's trial about strength of prosecution's evidence did not suggest improper bias against defendant, and thus comments did not constitute grounds to disqualify judge from presiding over defendant's murder trial; judge simply stated that he found live testimony and other evidence against accomplice to be sufficiently persuasive, judge did not refer to any evidence or information beyond what trial witnesses elucidated through their testimony, and judge's comments did not go beyond narrow questions he was tasked to answer regarding whether evidence was sufficient to establish guilt and what penalty suited the crime. [Cal. Civ. Proc. Code § 170.1](#). [People v. Perez](#), 4 Cal. 5th 421, 229 Cal. Rptr. 3d 303, 411 P.3d 490 (Cal. 2018).

Judge's remarks to property insurer's counsel at hearings on insurer's motion for a protective order to limit discovery in coverage dispute which gave judge's view of what the facts would show and how an expert would view those facts, without any record evidence before the court, warranted disqualification, because they created a well-founded fear that insurer would not be dealt with in a fair and impartial manner, and confirmed that the judge had pre-judged the facts of the case. [Great American Ins. Co. of New York v. 2000 Island Blvd. Condominium Ass'n, Inc.](#), 153 So. 3d 384 (Fla. 3d DCA 2014).

Trial judge's alleged off-the-record comment about the way judge would rule on juvenile's suppression motion did not reasonably call judge's impartiality into question, and therefore judge was not required to be disqualified in juvenile delinquency proceeding, where judge requested that the parties brief and argue the issue of whether he was bound by another court's suppression order, indicating concern with possible effect of collateral estoppel rather than prejudicial reliance on extraneous material, judge also allegedly commented that he would follow the law, and the State

did not identify anything in suppression ruling indicating that judge in fact relied on evidence that was not presented to the court. Neb. Code of Jud. Conduct § 5-302.11. [In re Interest of J.K.](#), 300 Neb. 510, 915 N.W.2d 91 (2018).

Comments by judge who presided over defendant's motion for postconviction relief at close of hearing raised questions regarding judge's impartiality, and thus, judge should have recused himself sua sponte, regardless of defendant's failure to file motion to recuse; in response to defendant's assertion that counsel were ineffective for failure to timely communicate alleged confirmed plea offer from State, judge reiterated his longstanding professional acquaintance and familiarity with defense counsel and stated that they were [t]wo of the most preeminent lawyers in the country and in the world, he described defendant's claims of ineffective assistance of counsel as almost absolutely laughable, he characterized postconviction counsel as sitting back as a Monday morning quarterback and evaluating their performance hindsight, and comments indicated judge's opinion that defense counsel were so preeminent, skilled, and knowledgeable that they could never be ineffective in any case. [U.S. Const. Amend. 6](#); Tenn. Code of Jud. Conduct, Canon 2.11; Tenn. Sup. Ct. R. 10B, § 1.01. [Cook v. State](#), 606 S.W.3d 247 (Tenn. 2020).

[END OF SUPPLEMENT]

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Footnotes

- 1 Pa.—[Com. v. Druce](#), 2002 PA Super 70, 796 A.2d 321 (2002), judgment aff'd, 577 Pa. 581, 848 A.2d 104 (2004).

Antitrust action
A district judge's interviews with reporters, during which he commented about a pending antitrust action against the manufacturer of a personal computer operating system, created the appearance that he was not acting impartially; members of the public could reasonably question whether the judge's desire for press coverage influenced his judgments.

U.S.—[U.S. v. Microsoft Corp.](#), 253 F.3d 34 (D.C. Cir. 2001).

A.L.R. Library
[Disqualification or Recusal of Judge Due to Comments at Continuing Legal Education \(CLE\) Seminar or Other Educational Meetings](#), 49 A.L.R.6th 93.
- 2 U.S.—[U.S. v. Ciavarella](#), 716 F.3d 705 (3d Cir. 2013), petition for cert. filed (U.S. Oct. 22, 2013).
- 3 Fla.—[Martin v. State](#), 804 So. 2d 360 (Fla. 4th DCA 2001).
- 4 Fla.—[Martin v. State](#), 804 So. 2d 360 (Fla. 4th DCA 2001).
- 5 U.S.—[In re Reassignment of Cases](#), 736 F.3d 118 (2d Cir. 2013).
- 6 U.S.—[In re Reassignment of Cases](#), 736 F.3d 118 (2d Cir. 2013).

- 7 U.S.—In re Reassignment of Cases, 736 F.3d 118 (2d Cir. 2013).
- 8 Minn.—Roatch v. Puera, 534 N.W.2d 560 (Minn. Ct. App. 1995).
- 9 Pa.—Com. v. Druce, 2002 PA Super 70, 796 A.2d 321 (2002), judgment aff'd, 577 Pa. 581, 848 A.2d 104 (2004).
- 10 U.S.—In re Reassignment of Cases, 736 F.3d 118 (2d Cir. 2013).

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